

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID BALDWIN

Claimant

VS.

KANSAS CITY POWER & LIGHT

Respondent,
Self-Insured

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Docket No. 227,680

ORDER

Respondent appealed both the October 7, 1999 Award and the October 8, 1999 Award Nunc Pro Tunc entered by Administrative Law Judge Brad E. Avery. The Appeals Board heard oral argument in Topeka, Kansas, on February 2, 2000.

APPEARANCES

Gary L. Jordan of Ottawa, Kansas, appeared for the claimant. John David Jurcyk of Lenexa, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award Nunc Pro Tunc.

ISSUES

This is a claim for an August 7, 1997 accident that fractured claimant's left heel. Utilizing the functional impairment rating provided by the court-appointed independent medical examiner, Dr. Sergio Delgado, the Judge found that claimant had sustained a 46 percent functional impairment to the left lower extremity.

Respondent contends that Judge Avery erred. It argues that Dr. Delgado did not follow the *AMA Guidelines to the Evaluation of Permanent Impairment* and, therefore, the only evidence of permanent impairment is Dr. Michael Poppa's five percent rating.

Conversely, claimant contends the Judge was correct and the Award Nunc Pro Tunc should be affirmed.

The only issue before the Appeals Board on this appeal is the nature and extent of injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

1. The Award Nunc Pro Tunc should be affirmed.
2. On August 7, 1997, claimant fractured his left heel while working for the respondent. The parties stipulated that the accident arose out of and in the course of employment.
3. When the parties could not agree to the nature and extent of claimant's functional impairment, the Judge appointed board-certified orthopedic surgeon Sergio Delgado, M.D., to examine and evaluate claimant. Dr. Delgado, who was consulted in creating the fourth edition of the *AMA Guides to the Evaluation of Permanent Impairment (Guides)*, used those *Guides* and determined that claimant had a 46 percent functional impairment to the left lower extremity. Dr. Delgado found that claimant had a comminuted fracture of the left calcaneus, which was confirmed by both CAT scan and x-rays, with loss of Bohler's angle, widening of the heel, limited dorsiflexion of the foot, and left calf atrophy.
4. The Judge found Dr. Delgado's testimony and opinions were more persuasive than Dr. Poppa's. Adopting Dr. Delgado's functional impairment rating, the Judge determined that claimant had a 46 percent permanent partial disability to the left lower extremity. The Appeals Board affirms that finding.

The Appeals Board is aware that Dr. Poppa, the osteopathic physician that respondent hired to evaluate claimant and testify in this proceeding, disagreed with Dr. Delgado's finding of loss of Bohler's angle. But the Board is also aware that both Doctors Michael B. Parsa and T. D. Kennedy, the radiologists who interpreted x-rays taken at Dr. Poppa's request, found a loss of Bohler's angle. Claimant argues that the opinions by Dr. Poppa are not credible. In this instance, the Appeals Board agrees. Despite Dr. Poppa's testimony, the Board is persuaded that claimant did sustain a loss of Bohler's angle in his foot.

Respondent's argument that Dr. Delgado incorrectly determined the loss of Bohler's angle goes to the weight that Dr. Delgado's opinion should be given. Dr. Delgado rated claimant according to the fourth edition of the *Guides*. Considering the entire record, the Appeals Board finds and concludes that Dr. Delgado's opinions concerning the nature and extent of claimant's injury are more accurate and more persuasive than Dr. Poppa's.

5. The Appeals Board adopts the findings set forth in the Award and Award Nunc Pro Tunc to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Appeals Board affirms the October 8, 1999 Award Nunc Pro Tunc entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary L. Jordan, Ottawa, KS
John David Jurcyk, Lenexa, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director